

REMARKS

Claims 1-44, 46-48, and 56-63 are currently pending. Claims 37, 46, and 48 are currently amended. Claims 45, and 49-55 were previously cancelled without prejudice. Applicants thank the Examiner for the indication of allowable subject matter in claims 7-12, 25-30, 42-44, and 58-63. No new matter has been added.

Independent claims 37 and 46 have been amended to more particularly point out that the housing and the guide barrel are monolithic. Support for this amendment appears, *inter alia*, at paragraph [0080] and Fig. 1 of the specification as-filed.

Claim 48 has been amended to correct a typographical error.

No new matter has been added by these amendments.

Objections to the Information Disclosure Statement

The Information Disclosure Statement filed August 29, 2005 was objected to for failing to list all references cited in the International Search Report. Applicants herewith attach a List of References Cited by Applicant in Appendix A, and regret the earlier omission.

Objections to the Claims

Claim 48 was objected to due to an informality. As claim 48 is currently amended to correct this informality, Applicants submit this objection is moot.

Rejections under 35 U.S.C. § 102(b)

Claims 1-6, 13-15, 17-24, 31-33, 35-41, 46, 56, and 57 were rejected 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,342,057 to Brace et al. ("Brace"). Claims 37-40, and 46 were rejected as being anticipated by U.S. Patent No. 5,669,915 to Caspar et al. ("Caspar"). These rejections should be withdrawn.

Brace describes a remotely aligned surgical drill guide consisting of an alignment assembly 110 having a variable angle block 202 with two alignment drill tubes 134, 136, wherein the block 202 is variably arranged at a variety of angulations relative to bushing 206 via teeth 320. "Preferably variable angle block 202 is free to move over a range of about 20° in a single plane....Notably, a surgeon may reset the angulation of the variable angle block 202 after drilling or tapping each hole and/or inserting each bone screw." (Brace at 12:27-32). This is beneficial, because it "permits the surgeon the freedom to vary the angulation for drilling each hole and insertion of each screw." (*Id.* at 12:32-36).

Caspar describes a drilling jig for surgical drilling tools consisting of a two sleeves 2 associated with a holder 4 via arms 3, such that the sleeves 2 are pivotably related to each other. (Caspar at 3:29-31, Fig. 1).

Independent claim 1 recites a drill guide having a drill guide and an alignment assembly, “wherein the guide barrel is not pivotable relative to the alignment assembly.” Brace is clearly inapposite, as variable angle block 202 having drill tubes 134, 136 is designed to be variably angulated, and therefore pivotable, relative to bushing 206. Thus, Brace fails to describe each and every element of claim 1. Applicants therefore submit that the rejection of independent claim 1, along with the rejections of dependent claims 2-6, 13-15, and 17-18, should be withdrawn.

Independent claim 19 recites a drill guide having a drill guide and an alignment assembly, “wherein the guide barrel has a substantially different length than the alignment assembly.” Brace does not have any description of the lengths, relative or absolute, of drill tubes 134, 136 and bushing 206. However, a cursory review of the drawings shows that the Brace drill tubes 134, 136 or bushing 206 are instead substantially *identical* in length. (See Brace at Figs. 6, 7). In contrast, the drill guide of the present invention is of a substantially *different* length than the alignment assembly, as seen, for example, in Fig. 1 of the specification. Thus, Brace fails to describe each and every element of claim 19. Applicants therefore submit that the rejection of independent claim 19, along with the rejections of dependent claims 20-24, 31-33, and 35-36, should be withdrawn.

Independent claims 37 and 46 recite a drill guide having a drill guide and an alignment assembly having a housing, “wherein the housing and the guide barrel are monolithic.” In contrast, Brace describes drill tubes 134, 136 separate and distinct from bushing 206 (see Brace at Figs. 8, 16), and Caspar describes sleeves 2 separate and distinct from one another, joined by arms 3 and screw 5 (see Caspar at Fig. 1). Thus, both Brace and Caspar, either singly or in combination, fail to describe each and every element of claims 37 and 46. Applicants therefore submit that the rejection of independent claims 37 and 46, along with the rejections of dependent claims 38-41, and 46, should be withdrawn.

Independent claim 56 recites a drill guide having a “a *guide barrel*..., an alignment assembly associated with the guide barrel for aligning the bone tool with a selected first *or* second fastener hole of a bone plate, the alignment assembly comprising a location post...; wherein the location post is pivotable about the bone plate recess to allow the guide barrel to be selectively aligned with the first and second fastener holes.” Brace, however, describes a drill guide having *two* drill tubes 134, 136 which “preferably have a fixed

orientation with respect to the center plane,” and are used to drill holes via respective fixation holes in a bone plate. (Brace at 11:34-36, Fig. 12). Thus, there is no description in Brace of a *single* guide barrel able to be selectively aligned with a first fastener hole *and* a second fastener hole. Applicants therefore submit that the rejection of independent claim 56, along with the rejection of dependent claim 57, should be withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 16, 34, 47, 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brace. As discussed above, Brace fails to describe each and every element of independent claims 1, 19, and 46. Thus, as claim 16 depends on independent claim 1, claim 34 depends on independent claim 19, and claims 47 and 48 depend on independent claim 46, the rejections of claims 16, 34, 47, 48 should also be withdrawn.

CONCLUSION

Claims 1-44, 46-48, and 56-63 are believed to be in condition for allowance.

Should Examiner not agree with any of Applicants’ positions or arguments herein, a telephonic or personal interview is respectfully requested to discuss and resolve any remaining issues.

No fee is believed due for this response. If any fee(s) are due at this time, please charge such fee(s) to Jones Day Deposit Account No. 503013.

Respectfully submitted,

Date: May 4, 2006


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APPENDIX A

List of References Cited by Applicant



REFERENCES CITED BY APPLICANT (Use several sheets if necessary)

ATTY. DOCKET NO.

8932-890-999

APPLICATION NO.

10/823,215

APPLICANT

Rathbun et al.

FILING DATE

April 12, 2004

GROUP

3731

U.S. PATENT DOCUMENTS

| *EXAMINER INITIAL | | DOCUMENT NUMBER | DATE | NAME | CLASS | SUBCLASS | FILING DATE IF APPROPRIATE |
|----------------------|-----|-----------------|------------|----------|-------|----------|-------------------------------|
| | A01 | 5851207 A | 12/22/1998 | Cesarone | | | |
| | A02 | D404126 S | 1/12/1999 | Asfora | | | |
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FOREIGN PATENT DOCUMENTS

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| | B01 | | | | | | | |
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OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)

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EXAMINER

DATE CONSIDERED

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.